EXHIBIT 2
DATE 3/16/2011
SB 233

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March 11, 2011

Federal Relations, Energy, and Telecommunications Committee

Re: Senate Bill 233

Dear Committee Members,

During the hearing on Senate Bill 233 statements were made that the Montana Environmental Policy Act (MEPA) is the only state law that provides for protection of cultural and historical resources. In response to a question, Senator Keane indicated that the statement was inaccurate and that there were other state laws that did protect the cultural and historic resources of Montana. He further indicated he would provide copies of such laws to the committee. While not an exhaustive list of all of Montana's laws the following acts are some that do provide protections to Montana's cultural and historic resources; a copy of relevant parts is attached:

The Montana Strip and Underground Mine Reclamation Act (coal mining)
The Open Cut Mining Act (sand, gravel, and other minerals)
The Metalliferous Mining Act (gold, silver, hard rock minerals)
The Montana Major Facility Siting Act (MFSA) (generating facilities, transmission lines, pipe lines)
The State Antiquities Act

As you will see by reading the highlighted portions of the attachments, each of these statutes and rules provide protections to Montana's cultural and historic resources. It was mentioned that the Clean Air Act does not provide for such protections. While that may be accurate, air quality permits are not acquired in a vacuum. They are acquired for projects, such as a mine, power plant, transmission line, etc. Therefore, the above list of statues would apply to the particular project involved.

Moreover it is important to point out that Senate Bill 233 does not change or diminish the evaluation of cultural resources through the impact statement process and MEPA. The

opponents did not point to any part of the bill which supported their claim that Senate Bill 233 reduced the analysis of cultural resources.

If you have any questions, I would certainly be glad to answer them.

Sincerely,

By _____
Leo Berry

"SECTION 3.21 BASELINE INFORMATION FOR CULTURAL RESOURCES

3.21.1 Proposed Generation or Conversion Facility

(1) An application must contain cultural resource data for the proposed site and its impact zones. The impact zones include lands where surface disturbance that occurs during construction and operation of the facility would directly affect the integrity of cultural resources and lands with known cultural resource sites from which the facility would be clearly visible from a distance of 30 miles or less where the values of the cultural resources may be significantly affected by the visual presence of the facility. The cultural resource data must include the following categories of sites:

(a) national historic landmarks, and national register historic districts and sites;

(b) sites or districts nominated to or potentially eligible for the national register;

(c) areas with geologic units or formations that show a high probability of having significant paleontological resources; and

(d) sites that have or may have religious or heritage significance and value to Native Americans as identified in Section 3.21.

(2) An application must contain the following data:

(a) an overview of the history and prehistory of the proposed site and its impact zones;

(b) a description of, and a map at a scale of 1:125,000 or other appropriate scale determined in consultation with the department, indicating the location and the extent of previous survey work in the impact zones, and including a legend showing level of intensity, the reference date of survey, the sponsor, resultant report, the type of resource and the boundaries of each cultural site and historic or archeological district, when available;

(c) based on the results of (a) and (b) above and appropriate field checking of cultural resource site boundaries, identification of any inadequacies of previous survey work that could complicate efforts to fully define all significant classes of sites or properties and to anticipate their occurrence; and a discussion of the accuracy of predictions concerning:

(i) site densities and distribution;

(ii) the presence or absence of sites, trails, and properties; and

(iii) site integrity and existing modern intrusions;

(d) based on (c) above, a description of the potential for undiscovered cultural sites to be encountered, with an assessment of the potential cultural, historic or archaeological significance of these sites; and

(e) for any cultural resource sites or properties identified or more fully defined by the information required by (a) through (d) above, a discussion, based on consultation with the state historic preservation office, of the potential eligibility of these sites or properties for listing on the national register.

3.21.2 Off-site Associated Facilities

(1) For off-site associated power lines and pipelines, an application must contain cultural resource data as described in Section 3.21.1(1) and (2)

above for the proposed and any alternate location and their impact zones. The impact zones include any lands where construction and operation of the associated facility, including construction of access roads, may directly affect the integrity of cultural resources and any lands with known cultural resource sites from which the associated facility would be clearly visible and where the values of cultural resources may be significantly affected by the visual presence of the facility. An application must contain the results of an on-the-ground survey of cultural resources along the proposed and any alternate location, based on the importance of the sites and the degree of potential adverse impact that is expected to occur. The survey results shall be submitted on site survey forms that identify the adverse impacts. Mapping requirements regarding cultural resource sites shall be determined through consultation with the department.

SECTION 3.22 ASSESSMENT OF IMPACTS ON CULTURAL RESOURCES PROPOSED GENERATION OR CONVERSION FACILITY AND OFF-SITE ASSOCIATED FACILITIES
An application must contain an assessment of the potential impacts of the facility on cultural resources for the proposed site and the proposed and any alternate locations for off-site associated facilities based on information from Section 3.21 above. The assessment must address the potential for physical destruction or degradation of the qualities for which cultural resource sites are eligible or potentially eligible for the National Register during construction of the facility and off-site associated facilities. The assessment also shall address the potential for physical destruction or degradation of those qualities during operation of the facility and associated facilities. Cultural resource-related information required by Sections 3.15 and 3.24 of this circular will satisfy the visual and recreation-related impact requirements of this section. The assessment must include a description of proposed treatment plans that would be employed to avoid, mitigate, or offset potentially significant effects for each affected cultural resource site or property identified in Section 3.21."

For linear facilities, the requirements are contained in Circular MFSA-2. Section 3.4(10) of that circular contains the following application requirements:

"(10) An application must contain an overview of the history and prehistory of the study area, including the following:
(a) state and federal agency files search results to identify the types of potentially significant historical, prehistorical, architectural, and paleontological resource sites likely to be encountered in the study area and a statement indicating the amount of previous survey work conducted in the study area;
(b) a summary of the nature of the existing historical, prehistorical, or paleontological data base and identification of any inadequacies such as a lack of previous survey work in the study area that could complicate efforts to fully define all significant classes of sites or properties in (a) and to anticipate their occurrence;

(c) identification of sites in (a) likely to be encountered in the study area and an assessment of the potential for sites to yield information of significant value to historic and prehistoric research; and
(d) a map at a scale of 1:125,000, or other appropriate scale determined in consultation with the department, indicating the location and the extent of previous survey work, based on the results of (a) and including a legend showing level of intensity, the reference date of survey, the sponsor, resultant report, the type of resource and the boundaries of each site in (a), national historic landmark, national register historic districts and sites, and national register historic districts and sites nominated to or designated by SHPO (state historic preservation office), when available."

Subsection (13) of section 3.7 of the circular provides the following requirements for electric transmission lines:

"(13) Based on the cultural, historical and paleontological resource overview required by Section 3.4(10), an application must contain cultural and paleontological resource data for each alternative facility location and its impact zones. The impact zones include any lands where construction and operation of the facility, including construction of access roads, may directly affect the integrity of cultural, historical, or paleontological resources and any lands with known cultural sites from which the facility would be clearly visible where the values of cultural resources may be significantly affected by the visual presence of the facility. An application must contain the following data:
(a) the results of an on-the-ground survey of cultural resources each alternative facility location, based on the importance of the sites and the degree of potential adverse impact that is expected to occur and based on the data and analysis conducted by the applicant for (10) and (11). The mapping requirements regarding cultural resource sites may be altered by conditions specified by the department pursuant to ARM 17.20.804. The survey results shall be submitted on site survey forms that identify the adverse impacts;
(b) for any cultural resource sites or properties identified or more fully defined by the information required by (a), a discussion, based on consultation with the state historic preservation office, of the potential eligibility of these sites or properties for listing on the national register.
(14) An application must contain an assessment of the potential impacts of the facility on cultural, historical, and paleontological resources for each alternative facility location. The assessment must address the potential for physical destruction during construction or operation of the facility. Cultural, historical and paleontological resource-related information required by (10) and (11) will satisfy the visual impact requirements of this section. The assessment must include the following:
(a) for each of the following potentially affected cultural resource properties or sites and for any properties or sites identified by (13)(b) which may be eligible for listing on the national register, a discussion of whether the facility would affect the qualities for which these sites or properties were listed or could be listed:

(i) national historic landmarks, and national register historic districts and sites;
(ii) national register historic districts and sites nominated to or designated by SHPO (state historic preservation office);
(b) a discussion of whether the proposed facility would affect the qualities of:
(i) areas with geologic units or formations that show a high probability of including significant paleontological resources; and
(ii) sites that have, or may have, religious or heritage significance and value to Indians as identified by Section 3.4(1)(t).
(c) identification of special construction methods and topographic screening that could eliminate or reduce impacts, and a discussion of the likelihood of success of each measure in reducing impact.
(d) documentation that consultation has occurred with SHPO, affected state and federal agencies, and tribes regarding any affected cultural sites, impacts, and mitigation.
"

Section 3.8 contains the requirements for pipelines. It does not have specific cultural resource requirements, but an application for a pipeline is subject to the cultural resource information requirements of section 3.21. In addition, subsection (1) of 3.8 provides that a pipeline application must contain the same information as is required for transmission lines under 3.7(10).

Finally, sections 3.9 and 3.10 provide as follows for both transmission lines and pipelines:

"SECTION 3.9 COMPARISON OF ALTERNATIVE FACILITY LOCATIONS (1) An application must contain a comparison of the alternative facility locations which includes the following:
(a) A summary of the most important impacts of the proposed facility for each of the alternative facility locations, and the impact zones as determined by the baseline study conducted pursuant to Section 3.7 or 3.8.
(b) A description of the degree to which the most important adverse impacts can be mitigated for each alternative facility location.
(c) A ranking of the alternative facility locations from best to worst for each of the following categories, and an indication of the relative differences among the alternatives for each category:
(i) levelized annual costs, including environmental costs and mitigation costs:;
(ii) reliability;
(iii) land use considerations;

(iv) socioeconomic considerations;
(v) earth resources;
(vi) engineering considerations;
(vii) visual resources;
(viii) biological resources;
(ix) historic, archaeologic and paleontologic resources;

(x) recreation;
(xi) water resources;
(xii) noise, radio and television interference and electrical effects; and
(xiii) any other categories that are important to the applicant. The applicant may combine or add to the categories as appropriate.
(d) A comparative ranking of the alternative facility locations from best to worst and an indication of the magnitude of the differences between facility locations, considering all of the categories listed in (3) consistent with the requirements of Section 3.10.

SECTION 3.10 SELECTION OF THE PREFERRED FACILITY LOCATION (1) the applicant must select a preferred facility location from the alternative locations selected in accordance with Section 3.5. An application shall contain a discussion of the rationale used to make the selection, including the following:
(a) the applicant's selection criteria and how they were applied;
(b) an explanation of how the preferred location criteria listed in Section 3.1(1) or (2) were applied. If weighting of the criteria is used in order to select the preferred facility location, an application must identify the relative weights given to each criterion and the reasons for assigning each weight;
(c) a discussion of the relative importance of the categories listed in Section 3.9(3), and identification of any categories that were considered more important than others in selecting the preferred facility location. An application must clearly explain any weighting system used to portray differences in importance among the categories in selecting the preferred facility location;
(d) an explanation of how areas listed in Section 3.2(1)(d)(i)(iii) were considered in selecting the preferred route; and
(e) an explanation of how areas listed in Section 3.2(1)(d)(iv) through (f) and 3.4(1) through (3), were considered in selecting the preferred facility location."

Antiquities

Montana Code Annotated 2009

22-3-434. Denial of applications. State agencies may deny or approve with conditions any application for an easement, lease, permit, contract, license, or certificate in order to protect heritage properties and paleontological remains that cannot be properly mitigated; provided that this section is limited only to heritage properties and paleontological remains which have been located as a part of the environmental impact statement reviews process as described in 22-3-433.

History: En. Sec. 11, Ch. 563, L. 1979.

Provided by Montana Legislative Services

Coal Mining Permits

Montana Code Annotated 2009

82-4-227. Refusal of permit. (1) An application for a prospecting, strip-mining, or underground-mining permit or major revision may not be approved by the department unless, on the basis of the information set forth in the application, in an onsite inspection, and in an evaluation of the operation by the department, the applicant has affirmatively demonstrated that the requirements of this part and rules will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area can be carried out consistently with the purpose of this part. The applicant for a permit or major revision has the burden of establishing that the application is in compliance with this part and the rules adopted under it.

(2) The department may not approve the application for a prospecting, strip-mining, or underground-mining permit when the area of land described in the application includes land that has special, exceptional, critical, or unique characteristics or when mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land that has special, exceptional, critical, or unique characteristics. For the purposes of this part, land is defined as having these characteristics if it possesses special, exceptional, critical, or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonably foreseeable future;

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a systemwide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. In applying the provisions of this subsection (d), particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.

(3) The department may not approve an application for a strip- or underground-coal-mining permit or major revision unless the application affirmatively demonstrates that:

(a) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the department and the proposed operation of the mining operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(b) the proposed strip- or underground-coal-mining operation would not:

(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and excluding land about which the department finds that if any farming will be interrupted, discontinued, or precluded, it is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(ii) materially damage the quantity or quality of water in surface water or underground water systems that supply the valley floors described in subsection (3)(b)(i).

(4) Subsection (3)(b) does not affect those strip- or underground-coal-mining operations that in the year preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct strip- or underground-coal-mining operations within alluvial valley floors. If coal

deposits are precluded from being mined under this subsection, the director of the department shall certify to the secretary of interior that the mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law 95-87.

(5) (a) If the area proposed to be mined contains prime farmland, the department may not grant a permit to mine coal on the prime farmland unless it finds in writing that the applicant:

(i) has the technological capability to restore the mined area, within a reasonable time, to levels of yield equivalent to or higher than nonmined prime farmland in the surrounding area under equivalent levels of management; and

(ii) can meet the soil reconstruction standards of 82-4-232(3).

(b) Nothing in this subsection (5) applies to a permit issued prior to August 3, 1977, or to any revisions or renewals of the permit or to any existing strip- or underground-mining operations for which a permit was issued prior to August 3, 1977.

(6) If the department finds that the overburden on any part of the area of land described in the application for a prospecting, strip-mining, or underground-mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists. The burden is on the applicant to demonstrate that any area should not be deleted under this subsection.

(7) If the department finds that the operation will constitute a hazard to a dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip-mining, or underground-mining permit application before it can be approved. Strip- or underground-coal-mining may not be allowed:

(a) within 300 feet of an occupied dwelling, unless waived by the owner;

(b) within 300 feet of any public building, school, church, community, or institutional building, or public park;

(c) within 100 feet of a cemetery;

(d) within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join the right-of-way line. The department may permit the roads to be relocated or the area affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected will be protected.

(8) Strip- or underground-mining may not be conducted within 500 feet of active or abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners. However, the department shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:

(a) the nature, timing, and sequencing of specific strip-mine activities and specific underground-mine activities are jointly approved by the department and the regulatory authority concerned with the health and safety of underground miners; and

(b) the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(9) The department may not approve an application for a strip- or underground-coal-mining operation if the area proposed to be mined is included:

(a) within an area designated unsuitable for strip or underground coal mining; or

(b) within an area under review for this designation under an administrative proceeding, unless in an area as to which an administrative proceeding has commenced pursuant to this part, the operator making the permit application demonstrates that prior to January 1, 1977, the operator made substantial legal and financial commitments in relation to the operation for which the operator is applying for a permit.

(10) A permit or major permit revision for a strip- or underground-coal-mining operation may not be issued unless the applicant has affirmatively demonstrated by its coal conservation plan that failure to conserve coal will not occur. The department may require the applicant to submit any information it considers necessary for review of the coal conservation plan.

(11) Whenever information available to the department indicates that a strip- or underground-coal-mining operation that is owned or controlled by the applicant or by any person who owns or controls the applicant is currently in violation of Public Law 95-87, as amended, any state law required by Public Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection, the department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the administering agency.

(12) The department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, to any applicant that it finds, after an opportunity for hearing, owns or controls any strip- or underground-coal-mining operation that has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, when the nature and duration of the violations and resulting irreparable damage to the environment indicate an intent not to comply with the provisions of this part.

(13) Subject to valid existing rights, no strip- or underground-coal-mining operations except those that existed as of August 3, 1977, may be conducted:

(a) on lands within the boundaries of units of the national park system, the national wildlife refuge system, the national wilderness preservation system, the national system of trails, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act or study rivers or study river corridors established in any guidelines issued under that act, or national recreation areas designated by an act of congress; or

(b) on any federal lands within national forests, subject to the exceptions and limitations of 30 CFR 761.11(b) and the procedures of 30 CFR 761.13.

History: En. Sec. 9, Ch. 325, L. 1973; amd. Sec. 21, Ch. 441, L. 1975; R.C.M. 1947, 50-1042; amd. Sec. 9, Ch. 550, L. 1979; amd. Sec. 3, Ch. 225, L. 1993; amd. Sec. 372, Ch. 418, L. 1995; amd. Sec. 5, Ch. 127, L. 2005.

Provided by Montana Legislative Services

Hard Rock Mining

Montana Code Annotated 2009

82-4-335. Operating permit -- limitation -- fees. (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the department. Except as provided in subsection (2), a separate operating permit is required for each complex.

(2) (a) A person who engages in the mining of rock products or a landowner who allows another person to engage in the mining of rock products from the landowner's land may obtain an operating permit for multiple sites if each of the multiple sites does not:

(i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or ground water;

(ii) have any water impounding structures other than for storm water control;

(iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;

(iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as threatened or endangered under the Endangered Species Act of 1973; or

(v) impact significant historic or archaeological features.

(b) A landowner who is a permittee and who allows another person to mine on the landowner's land remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission. The performance bond required under this part is and must be conditioned upon compliance with this part, the rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the landowner's consent.

(3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

(4) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of $500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed $5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(5) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) the name and address of the operator and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) the minerals expected to be mined;

(c) a proposed reclamation plan;

(d) the expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

(i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site; and

(o) an assessment of the potential for the postmining use of mine-related facilities for other industrial purposes, including evidence of consultation with the county commission of the county or counties where the mine or mine-related facilities will be located.

(6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(7) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock

mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(9) A person may not be issued an operating permit if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305; or

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(10) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (5)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members.

History: En. Sec. 8, Ch. 252, L. 1971; amd. Sec. 4, Ch. 281, L. 1974; R.C.M. 1947, 50-1208; amd. Sec. 6, Ch. 588, L. 1979; amd. Sec. 13, Ch. 617, L. 1981; amd. Sec. 1, Ch. 489, L. 1983; amd. Sec. 1, Ch. 345, L. 1985; amd. Sec. 3, Ch. 453, L. 1985; amd. Sec. 2, Ch. 582, L. 1985; amd. Sec. 1, Ch. 311, L. 1987; amd. Sec. 4, Ch. 93, L. 1989; amd. Sec. 3, Ch. 347, L. 1989; amd. Sec. 4, Ch. 227, L. 1991; amd. Sec. 1, Ch. 403, L. 1991; amd. Sec. 4, Ch. 637, L. 1991; amd. Sec. 3, Ch. 598, L. 1993; amd. Sec. 390, Ch. 418, L. 1995; amd. Sec. 4, Ch. 507, L. 1999; amd. Sec. 5, Ch. 488, L. 2001; amd. Sec. 2, Ch. 365, L. 2003; amd. Sec. 3, Ch. 63, L. 2005.

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Sand + Gravel Mining

Montana Code Annotated 2009

82-4-434. Plan of operation -- requirements. (1) The department shall immediately submit a plan of operation received in a permit or permit amendment application involving expansion of the permit area to the state historic preservation office for evaluation of possible archaeological or historical values in the area to be mined.

(2) The department shall accept a plan of operation if the department finds that the plan complies with the requirements of this part and the rules adopted pursuant to this part and that after the opencut operation is completed, the affected land will be reclaimed to a productive use. Once the plan of operation is accepted by the department, it becomes a part of the permit but is subject to annual review and amendment by the department. Any amendment by the department must comply with the provisions of 82-4-436(2).

(3) The department may not accept a plan of operation unless the plan provides:

(a) that the affected land will be reclaimed for one or more specified uses, including but not limited to forest, pasture, orchard, cropland, residence, recreation, industry, habitat for wildlife, including food, cover, or water, or other reasonable, practical, and achievable uses;

(b) that whenever the opencut operation results in a need to prevent acid drainage or sedimentation on or in adjoining lands or streams, catchments, ponds, or other reasonable devices to control water drainage and sediment will be constructed and maintained, provided the devices will not interfere with other landowners' rights or contribute to water pollution;

(c) that soil and other suitable overburden will be salvaged and replaced on affected land, when required by the postmining land use, after completion or termination of that particular phase of the opencut operation. The depth of soil and other suitable overburden to be placed on the reclaimed area must be specified in the plan.

(d) that grading will result in a postmining topography conducive to the designated postmining land use;

(e) that waste will be buried on site in a manner that protects water quality and is compatible with the postmining land use or will be disposed of off site in accordance with state laws and rules;

(f) that all access, haul, and other support roads will be located, constructed, and maintained in a manner that controls and minimizes erosion;

(g) that the opencut operation will be conducted to avoid range and wildland fires and spontaneous combustion and that open burning will be conducted in accordance with suitable practices for fire prevention and control. Approval of the plan for fire prevention and control under this part does not relieve the operator of the duty to comply with the air quality permitting and protection requirement of Title 75, chapter 2.

(h) that archaeological and historical values on affected lands will be given appropriate protection;

(i) that except for those postmining land uses that do not require vegetation, each surface area of the mined premises that will be disturbed will be revegetated when its use for the opencut operation is no longer required;

(j) that seeding and planting will be done in a manner to achieve a permanent vegetative cover that is suitable for the postmining land use and that retards erosion;

(k) that reclamation will be as concurrent with the opencut operation as feasible and will be completed within a specified length of time;

(l) that surface water and ground water will be given appropriate protection, consistent with state law,

from deterioration of water quality and quantity that may arise as a result of the opencut operation;

(m) that noise and visual impacts on residential areas will be minimized to the degree practicable through berms, vegetation screens, and reasonable limits on hours of operation; and

(n) that any additional procedures, including monitoring, that are necessary, consistent with the purposes of this part, to prevent significant physical harm to the affected land or adjacent land, structures, improvements, or life forms will be implemented.

(4) If reclamation according to the plan of operation has not been completed in the time specified, the department, after 30 days' written notice, shall order the operator to cease mining and, if the operator does not cease, may issue an order to reclaim, a notice of violation, or an order of abatement or may institute an action to enjoin further operation and may sue for damages for breach of the conditions of the permit, for payment of the performance bond, or for both.

(5) (a) At any time during the term of the permit, the operator may for good reason submit to the department a new plan of operation or amendments to the existing plan, including extensions of time for reclamation.

(b) The department may approve the proposed new plan of operation or amendments to the existing plan if:

(i) the new plan of operation or amendments comply with the requirements of this section; and

(ii) (A) the operator has in good faith conducted opencut operations according to the existing plan of operation; or

(B) it is highly improbable that reclamation will be successful unless the existing plan of operation is replaced or amended.

(6) The permit, plan of operation, and amendments accepted by the department are a public record and are open to inspection.

History: En. Sec. 10, Ch. 326, L. 1973; amd. Sec. 23, Ch. 39, L. 1977; R.C.M. 1947, 50-1510; amd. Sec. 6, Ch. 280, L. 1987; amd. Sec. 58, Ch. 16, L. 1991; amd. Sec. 413, Ch. 418, L. 1995; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 17, Ch. 507, L. 1999; amd. Sec. 4, Ch. 325, L. 2001; amd. Sec. 13, Ch. 385, L. 2007.

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